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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/663,307      | 09/16/2003  | Dale A. Frantz       | I6524               | 1353             |

50659 7590 07/03/2006

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EXAMINER

LHYMN, EUGENE

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3727

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/663,307

Applicant(s)

FRANTZ, DALE A.

Examiner

Eugene Lhymn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 9-10, 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ippolito (US 5511279) in view of Wakat (US 5956802) and Zurawin (US 4164803). With respect to claims 1 & 15 & 18, Ippolito discloses the following:

- A container having a plurality of walls with an open top
- A handle extending from the container body to be grasped by a human hand (74), wherein the container has an additional handle structure (22)

However, Ippolito fails to disclose the divider being removable. Nonetheless, Wakat teaches a paint container with a plurality of longitudinal dividers, which would run generally perpendicular to the partition 28, thereby providing additional means for storing multiple paints, but Wakat does not teach the dividers being removable.

Nonetheless, Zurawin teaches a similar paint container having a divider that is removable via slots (24 & 26) on the sidewalls, thereby providing a modular design.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add longitudinal dividers, and corresponding grooves disposed on the end

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walls to the container of Ippolito as taught by Wakat and Zurawin so as to provide a modular design and means for storing multiple paints.

With respect to claims 2 & 16, Ippolito discloses the front wall having a sloped portion 18 and a horizontal upper portion 42.

With respect to claims 3 & 17, Ippolito discloses a rib formed on an interior surface of the front wall (46).

With respect to claim 4, Ippolito discloses at least one generally horizontally extending rib formed on an interior surface of the lower portion of the front wall (46).

With respect to claim 5, Ippolito discloses a front, rear, and pair of sidewalls (Fig. 1).

With respect to claim 6, Ippolito discloses the container having a taper (Fig. 4).

With respect to claim 9, Ippolito discloses a handle with a grip portion 86 and a connector portion attaching said grip to container body, wherein the connector portion are the pair of legs extending perpendicularly from the grip portion, attaching to the container body.

With respect to claims 10 & 19, Ippolito discloses the grip portion being tubular (86).

With respect to claim 12, Ippolito discloses the divider tapering from an upper to lower edge (Fig. 4).

With respect to claim 13, Ippolito, as modified above, discloses means for retaining including a pair of spaced apart flanges formed on the interior of the container, thereby defining corresponding grooves.

With respect to claims 14 & 20, Ippolito discloses the handle 22 having a bottom portion 24 that extends in a common plane with the bottom of wall 12.

3. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ippolito in view of Wakat and Zurawin as applied to claim 1 above, and further in view of Tennant (US D461288 S). With respect to claims 7 & 8, Ippolito as modified above discloses the claimed invention except for the container having a lip extending upwardly from the upper edge of the walls, the lip being displaced outwardly forming an inner and outer step. However, Tennant teaches a paint container having an upwardly extending lip (Fig. 1) that is displaced outwardly, forming an inner step and outer step, thereby providing a flange that is conducive for nesting arrangements. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the outer perimeter of Ippolito to have an upper, outwardly extending lip as taught by Tennant, so as to provide a nesting flange.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ippolito in view of Zurawin as applied to claim 1 above, and further in view of Leffert (US 3837034). With respect to claim 11, Ippolito as modified above discloses the claimed invention except for the handle having a hang tab. However, Leffert teaches a similar paint container having hang tabs (curved end portions of 12), thereby providing hanging means. Therefore, it would have been obvious to one of ordinary skill in the art at the

time of the invention to modify the handle of Ippolito to have a hang tab as taught by Leffert so as to provide hanging means.

### ***Response to Arguments***

5. Applicant's arguments with respect to all claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER